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COUNSEL FOR AMERICREDIT FINANCIAL
SERVICES, INC., DOING BUSINESS AS
GM FINANCIAL

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

IN RE:

REAGOR-DYKES MOTORS, LP¹ * **CASE NO. 18-50214-rlj-11**
* **(Jointly Administered)**
Debtor *

**AMERICREDIT FINANCIAL SERVICES, INC. D/B/A/
GM FINANCIAL'S OBJECTION TO AIMBANK'S MOTION FOR
RELIEF FROM AUTOMATIC STAY AND TO ALLOW SETOFF**

NOW INTO COURT, through undersigned counsel, comes **AmeriCredit Financial Services, Inc. doing business as GM Financial ("GM Financial")**, the holder of a properly perfected first-in-right security interest in and to substantially all of the assets of Debtor, Reagor-

¹ The Debtors are Reagor-Dykes Imports, LP (Case No. 18-50215), Reagor-Dykes Amarillo, LP (Case No. 18-50216), Reagor-Dykes Auto Company, LP (Case No. 18-50217), Reagor-Dykes Plainview, LP (Case No. 18-50218), Reagor-Dykes Floydada, LP (Case No. 18-50219), Reagor-Dykes II LLC (Case No. 18-50323), Reagor Dykes III LLC (Case No. 18-50322), and Reagor-Dykes Auto Mall I LLC (Case No. 18-50325).

Dykes Snyder, L.P., (the “**R-D Snyder**”) which respectfully objects to AimBank’s Motion for Relief from Automatic Stay and to Allow Setoff [Docket No. 893] filed January 22, 2019 (“**AimBank’s Motion**”) because AimBank subordinated all rights of setoff to GM Financial.

1. GM Financial entered into a financing arrangement with R-D Snyder, which is evidenced by, among other things, a Master Loan Agreement dated January 23, 2018, by and between GM Financial and R-D Snyder (the “**MLA**”). A copy of the Master Loan Agreement and a copy of the Schedule 1 associated with the Master Loan Agreement is attached *en globo* hereto as **Exhibit A**.

2. Pursuant to the MLA, including specifically Section 7.1, R-D Snyder granted GM Financial, for the purpose of securing the prompt and punctual payment and satisfaction of all loans extended to R-D Snyder, a continuing security interest in all of R-D Snyder’s tangible and intangible assets specifically defined in Section 1.12 of the MLA as “**Collateral**.*” See Exhibit A.*

3. Also, pursuant to the MLA, GM Financial provided new motor vehicle, used motor vehicle, new demonstrator, and courtesy transportation vehicle financing on a revolving basis.

4. GM Financial perfected its security interest in the Collateral by filing a UCC-1 financing statement on January 17, 2018 as File Number 18-0001917835 with the Texas Secretary of State, State of Texas, (the “**Financing Statement**”). A copy of the Financing Statement is attached hereto as **Exhibit B**.

5. Pursuant to a Deposit Account Control Agreement dated January 23, 2018, R-D Snyder granted GM Financial a security interest in its deposit accounts at AimBank which agreement was acknowledged by AimBank as reflected on the copy attached as **Exhibit C** (the “**DACA**”).

6. The DACA gives GM Financial the right to require, among other things, that all amounts on deposit owed to R-D Snyder be paid directly to GM Financial upon demand, and was perfected by acknowledgment of AimBank.²

7. Pursuant to the DACA, R-D Snyder and AimBank agreed that “if, at any time, Bank [AimBank] receives written notice (“Control Notice”) from Lender [GM Financial] or its attorney of Lender’s intention to exercise control over the Operating Account, Bank *shall comply exclusively with Lender’s instructions* as to the withdrawal or disposing of funds in the Operating Account.”³

8. By letter dated August 7, 2018, GM Financial provided AimBank written notice of its intention to exercise control over the Operating Accounts (the “**Control Notice**”), stating “[t]his letter serves to advise you that effective immediately, GM Financial has elected to exercise its rights in all of the accounts of the Dealership [R-D Snyder] with AimBank and demands that AimBank immediately cease honoring drafts on all of the Dealership’s accounts and to deliver to GM Financial all funds in the accounts of the Dealership.” A copy of the Control Notice is attached hereto as **Exhibit D.**⁴

² Exhibit C, §1.1 and UCC articles 9-104(a)(2) and 9-314.

³ Exhibit C, §2.3, emphasis added.

⁴ Pursuant to the Control Notice, AimBank informed GM Financial that it was holding \$24,367.76 in one of the pledged accounts [1026] and that the other pledged account [3183] was overdrawn. Since the delivery of the Control Notice, GM Financial is aware of deposits having been made into the overdrawn account. GM Financial is entitled to both the \$24,376.76 and all amounts deposited into the second account following delivery of the Control Notice and reserves all rights with regard to both accounts and the failure of AimBank to adhere to its contractual obligations under the DACA.

9. The Control Notice further advised AimBank “that any deposits made to these accounts subsequent to receipt of this letter are to be held for the benefit of GM Financial and remitted in accordance with the instructions below.”⁵

10. AimBank’s Motion seeks to offset a certificate of deposit held by AimBank in the name of Reagor-Dykes Plainview, LP (“**R-D Plainview**”) against R-D Plainview’s obligations on a January 20, 2017 promissory note. After offsetting the certificate of deposit against the note, there will remain approximately \$53,179.61.⁶

11. AimBank’s Motion also seeks to offset a certificate of deposit held by AimBank in the name of Reagor-Dykes Auto Company, LP (“**R-D Auto**”) against R-D Auto’s obligations on a December 22, 2016 promissory note. After offsetting the certificate of deposit against the note, there will remain approximately \$178,967.96.⁷

12. AimBank’s Motion further seeks to offset dishonored checks paid to R-D Snyder,⁸ with the remaining \$53,179.61 and \$178,967.96, for a total of \$232,147.57 (“**CD Equity**”).⁹

13. As detailed in AimBank’s Motion, AimBank seeks to apply the CD Equity to offset the dishonored checks deposited into R-D Snyder’s accounts. First, AimBank documents \$473,332.00 of dishonored checks issued by R-D Plainview.¹⁰ Second, AimBank documents \$463,692.00 of dishonored checks issued by R-D Auto.¹¹ Thus, the debts that AimBank seeks to

⁵ Exhibit D, ¶4.

⁶ Docket No. 893, ¶2.

⁷ Docket No. 893, ¶5.

⁸ Docket No. 893, Exhibit E & Exhibit F.

⁹ Docket No. 893, ¶13.

¹⁰ Docket No. 893, ¶3 and ¶9(a).

¹¹ Docket No. 893, ¶6 and ¶9(b).

satisfy, will be satisfied by the offset of the CD Equity by a deposit into R-D Snyder's operating account, the very account over which GM Financial has a security interest.

14. Under the DACA, AimBank not only agreed to "comply exclusively" with GM Financials' instructions, it also specifically agreed to subordinate "to the security interest of Lender [GM Financial] all present and future liens, encumbrances, claims and *rights of setoff* in the Operating Account."¹²

15. Section 510(a) of the Bankruptcy Code provides that, "A subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable nonbankruptcy law."¹³ Subordination agreements are enforceable under Texas law, which requires the use of the plain meaning rule in contract construction.¹⁴

16. Pursuant to the DACA and Control Notice, R-D Snyder's deposit accounts are subject to GM Financial's first priority security interest and AimBank has subordinated any rights of offset it may have to GM Financial.¹⁵

17. AimBank's Motion ignores GM Financial's security interest and its previous agreement to subordinate.

18. GM Financial does not object to AimBank's Motion to the extent of the offset to pay the promissory notes directly secured by each respective CD, but objects to any application of

¹² Exhibit C, §2.6, emphasis added.

¹³ See also *In re Erickson Ret. Communities, LLC*, 425 B.R. 309, 314 (Bankr. N.D. Tex. 2010); *In re Terrace Gardens Park P'ship*, 96 B.R. 707, 716 (Bankr. W.D. Tex. 1989).

¹⁴ *In re GSYS Enterprises, Inc.*, 343 B.R. 568, 570–71 (Bankr. N.D. Tex. 2006).

¹⁵ Additionally, GM Financial entered into a financing arrangement with R-D Snyder, whereby GM Financial provided new motor vehicle, used motor vehicle, new demonstrator, and courtesy transportation vehicle financing on a revolving basis. GM Financial has determined that R-D Snyder "sold out of trust" ("SOT") sixty-eight (68) vehicles for a total outstanding balance of \$2,838,722.18. To the extent the checks by R-D Plainview and R-D Auto were made to R-D Snyder as payment for vehicles sold out of trust, GM Financial has a security interest in those proceeds.

the CD Equity to any party other than GM Financial and requests that this Court instruct AimBank to deliver to GM Financial the CD Equity in the amount of \$232,147.57.

WHEREFORE, AmeriCredit Financial Services, Inc. d/b/a GM Financial respectfully requests that AimBank's Motion for Relief from Automatic Stay and to Allow Setoff [Docket No. 893] filed January 22, 2019 be denied, in part, and that AimBank be ordered to deliver to GM Financial \$232,147.57 and for all other equitable relief as this Court deems just and necessary.

Respectfully submitted:

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